

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**VIRDA BELL BULLARD, *et al.*;**

**Plaintiffs,**

**VS.**

**BURLINGTON NORTHERN SANTA FE  
RAILWAY COMPANY, KOPPERS  
INDUSTRIES, INC., MONSANTO  
COMPANY, DOW CHEMICAL  
COMPANY, AND VULCAN  
MATERIALS COMPANY;**

## Defendants.

[illegible]

**CASE NO. 07-C-6883**

Judge Kennelly

Magistrate Judge Ashman

**PLAINTIFFS' AMENDED MOTION TO STRIKE AND  
OBJECTIONS TO DEFENDANTS' EXHIBITS**

Plaintiffs, VIRDA BELL BULLARD, *et al.*, submit the following objections and motion to strike regarding Exhibits to Defendants' Reply in Support of Motion to Transfer.

1. In connection with their Reply, Defendants filed significant new evidence, including Affidavits and Declarations, as support for their position. These exhibits were not filed with their original Motion to Transfer but rather are entirely new in nature and raise evidence for the first time at the reply stage.

2. It is improper for Defendants to submit this new evidence in support of their Motion at this late stage. These materials were filed by Defendants after Plaintiffs have filed their response and when Plaintiffs are unable to address this evidence. If Defendants had this evidence, they should have filed it with their original Motion. Defendants have not provided any justification or excuse for filing this new material as part of their reply rather than with their

original Motion. At this late stage, these newly filed materials should be stricken in their entirety.

3. Apart from the fact that Defendants improperly filed new evidentiary materials in connection with their Reply brief, under Federal Rules of Evidence 803, the following portions of Defendants' Exhibits constitute inadmissible hearsay:

- a. Exhibit B, Defendants' Reply, Affidavit of Michael J. Mancione, §§10, 11;
- b. Exhibit C, Defendants' Reply, Declaration of John M. Floyd, Lines 7 through 11;
- c. Exhibit D, Defendants' Reply, Affidavit of Robert G. Kaley, II, §4; and
- d. Exhibit E, Defendants' Reply, Declaration of Ellen Burchfield, Pars. §§2, 3, 4.

4. Alternatively, if the Court does not strike the Exhibits to Defendants' Reply, Plaintiffs are entitled and should be permitted to conduct discovery concerning this newly filed evidence so as to be able to address the issues raised therein and, additionally, should be permitted to file a surreply to be able to respond to these newly raised issues<sup>1</sup>.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully pray that this Court enter an Order: (1) striking in their entirety the Exhibits to Defendants' Reply; alternatively: (2) striking the Exhibits identified above as inadmissible hearsay; (3) granting Plaintiffs leave to conduct discovery as to the newly filed Exhibits and Declarations and granting Plaintiffs leave to

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<sup>1</sup> Throughout their Reply and the Declarations and Affidavits attached, Defendants define the term Koppers as "Koppers, Inc." However, as noted in Exhibit B to Defendants' Reply, Koppers, Inc. did not exist until 1988. As shown by Plaintiffs' Exhibit 11, the Stickney Plant was built in Cook County in 1920 by Koppers, Co., not by Koppers, Inc. Therefore, Defendants' Affidavits and Reply Brief do not address conduct by Koppers, Co. in Illinois. Accordingly, even if these Affidavits and Declarations are not stricken, they are entitled to very little weight.

file a surreply; and (4) granting Plaintiffs any further, other, or different relief to which Plaintiffs are entitled that this Court deems reasonable, appropriate, and just.

Respectfully submitted,

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